

APPEAL NO. 000897

On March 27, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issue by deciding that respondent (claimant) sustained a compensable injury on \_\_\_\_\_. Appellant (self-insured) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. No response was received from claimant.

DECISION

Affirmed.

Claimant, a patrol officer for self-insured, testified that on \_\_\_\_\_, during his shift, he drove a patrol car that had a broken driver's seat with the back of the seat leaning backward at an angle while wearing his duty belt with his gear on the belt and that he felt sharp back pain like a muscle strain. Claimant went to Dr. F, who referred him to Dr. G, and Dr. G noted that lumbar x-rays were unremarkable and diagnosed claimant as having a lumbar strain. Dr. G also noted that claimant had developed lower back pain riding in a squad car with poor lumbar support. Claimant said that he missed less than a week of work due to his back strain, for which he took sick leave. Dr. FR reported that claimant reached maximum medical improvement on January 2, 1999, with a zero percent impairment rating. Dr. C reviewed information sent to him by self-insured and wrote in May 1999 that he found no evidence that claimant suffered an injury to his body that would be unique to his occupational activities and that the act of sitting in a vehicle will not cause a back injury. Claimant said that years before \_\_\_\_\_, he had sustained a work-related back injury from lifting a heavy object.

Claimant had the burden to prove that he was injured in the course and scope of his employment. The hearing officer found that on \_\_\_\_\_, claimant suffered a back strain from his job activities of driving a patrol vehicle and concluded that on \_\_\_\_\_, claimant sustained an injury in the course and scope of his employment. The hearing officer decided that claimant sustained a compensable injury on \_\_\_\_\_. Self-insured cites Appeals Panel decisions for the proposition that sitting, without anything more, does not result in a compensable injury. Self-insured contends that claimant did not prove that the car seat was broken, that claimant did not prove a causal connection between his employment and his claimed injury, that claimant did not prove that he has an injury, and that claimant had a mere noncompensable flare-up of a prior back injury. The hearing officer could believe claimant's testimony that the car seat was broken and that when sitting on the broken seat with his duty belt on he felt back pain like a muscle strain. Dr. G diagnosed claimant as having a lumbar strain. A back strain can constitute an injury. In Texas Workers' Compensation Commission Appeal No. 992798, decided January 27, 2000 (Judge Sanders dissenting), the Appeals Panel affirmed a hearing officer's decision that a security officer sustained a compensable injury from driving her employer's patrol vehicle that had a broken driver's seat. The hearing officer is the sole judge of the weight

and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge